

COURT PROCEEDINGS  
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1 OCTOBER 1947

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1 OCTOBER 1947

I N D E X

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1 Wednesday, 1 October 1947

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3  
4 INTERNATIONAL MILITARY TRIBUNAL  
5 FOR THE FAR EAST  
6 Court House of the Tribunal  
7 War Ministry Building  
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,  
10 at 0930.

11 - - -  
12 Appearances:

13 For the Tribunal, all Members sitting, with  
14 the exception of: HONORABLE JUSTICE HENRI BERNARD,  
15 Member from the Republic of France, not sitting from  
16 1500 to 1600.

17 For the Prosecution Section, same as before.

18 For the Defense Section, same as before.

19 - - -  
20 (English to Japanese and Japanese  
21 to English interpretation was made by the  
22 Language Section, ILTFE.)  
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1 MARSHAL OF THE COURT: The International  
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: The accused TOGO will be absent  
4 for the first half of the morning session, and the  
5 accused KAYA will be absent for the whole of the  
6 morning session, from the courtroom, conferring  
7 with their counsel.

8 MR. Yamaoka.

9 - - -

10 K E N S U K E H O R I N O U C H I, called as a  
11 witness on behalf of the defense, resumed the  
12 stand and testified through Japanese interpreters  
13 as follows:

14 MR. YAMAOKA: May it please the Tribunal,  
15 just before the close of the day yesterday the Tribunal  
16 made a ruling on hearsay. I find that for my purposes  
17 it will not be necessary to press these questions,  
18 that is, the conversations between this witness and  
19 the accused HIROTA, at this time.

20 THE PRESIDENT: It may never be necessary to  
21 decide that point. We will wait until it is necessary.

22 MR. YAMAOKA: I should be satisfied, if the  
23 Tribunal please, if this witness, however, is permitted  
24 to testify to the actual conversations that he attended  
25 and also to the conversations that he held with

Mr. Craigie, Sir Robert Craigie.

1           THE PRESIDENT: So far as his conversations  
2 are relevant and material, so far as what he heard  
3 HIROTA say to the ambassador is relevant and material,  
4 we will receive it. We understand there are no objec-  
5 tions to his saying what the ambassador said to HIROTA  
6 and HIROTA to the ambassador. We want the actual  
7 conversation if we can get it, not merely his version  
8 of it, the interpretation of it.

9           Mr. Chief of Counsel:

10          MR. KEENAN: Mr. President, yesterday's record  
11 discloses a matter of extreme importance which we  
12 believe requires immediate and decisive action on  
13 the part of this Court. I refer to that part of the  
14 record at pages 29,601, 29,602, 29,604. The following  
15 are the parts, and I quote:

16           "MR. YAMAOKA: I also wish to state, if the  
17 Tribunal please, that the mere omission of certain parts  
18 of these documents does not mean that we do not intend  
19 to rely on them.

20           "THE PRESIDENT: (Record page 29,602) More  
21 than one Member of this Tribunal has raised the question  
22 why you should not read all that you rely upon in these  
23 documents. If you don't think a part is worth read-  
24 ing, it is possible that those Members will not read  
25

1 any more than appears in the transcript" -- and,  
2 Mr. President, I emphasize the following words --  
3 "or consider any more than that.

4 \* \* \*

5 "MR. YAMAOKA: I had hoped, if the Tribunal  
6 please, to avoid reading certain parts of these docu-  
7 ments which had previously been covered by similar  
8 statements on other occasions by the accused HIROTA,  
9 in the desire not to burden the Tribunal any more  
10 than necessary with details.

11 "THE PRESIDENT: Read what you propose to read,  
12 Mr. Yamaoka."

13 (Page 29,604): "THE PRESIDENT: This morning  
14 I stated the attitude of some Members. Whether they  
15 are a majority I do not know."

16 It is respectfully suggested that the foregoing  
17 discloses that there exists not alone doubt, but a  
18 considerable doubt as to what procedure must be follow-  
19 ed to determine whether a document may become evidence  
20 in the case, or perhaps evidence that all Members of  
21 the Court will consider.

22 We from the United States are accustomed to  
23 what I believe is the universal rule that when a docu-  
24 ment is admitted in evidence in any tribunal it is  
25 completely admitted, and is as much a part of the



1 record as though every word were repeated in the  
2 transcript. Such documents are frequently referred  
3 to and quoted from in summation, usually in briefs,  
4 but sometimes in oral summation. There is more than  
5 a slight inference that some Members of this Court  
6 would not even consider a part of a document unless  
7 it appeared repeated in the transcript, word for word.  
8 There is more than a suggestion that some Members of  
9 this Court would not even consider the document in  
10 evidence unless it were read into the record. This  
11 situation is made more alarming by the candid disclosure  
12 of the Honorable President that he himself does not  
13 know whether those taking this view constitute a  
14 majority of this Court.

16 It need not be pointed out, I am sure, that  
17 there is nothing more important than a determination  
18 of what is or what is not before the Court for consider-  
19 ation, especially at the time of judgment when men's  
20 lives and liberty are at stake in this proceeding.

21 With great respect we submit and uphold  
22 these propositions:

23 (1) A document cannot be both in evidence  
24 and out at the same time.

25 (2) If a document is in evidence, both the  
~~prosecution and the defense have every right to assume~~

1 that it will be considered by every single Member  
2 of this Tribunal and given whatever weight it deserves  
3 in each Judge's opinion. That is to say, more specif-  
4 ically, every member of the prosecution and defense,  
5 and, of course, the accused themselves, have a right  
6 to assume that if a document is admitted by this  
7 Court no Member of the Tribunal will have a right,  
8 in conscience, or will be expected to disregard any  
9 part of it for the simple reason that it is not fully  
10 spread on the typewritten transcript.

11 With great respect we suggest that there is  
12 some vital misunderstanding upon this point. Because  
13 it is so important, it goes to the heart of the trial.  
14 The record at present would indicate either that the  
15 Court has no ruling on this point, or it has a ruling  
16 which is not clearly that of the majority, or that  
17 it has a ruling binding upon some Members of this  
18 Tribunal and not upon others.  
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1 For the aforementioned reasons we ask  
2 respectfully, specifically, that this Court inform  
3 in open court the prosecution and the defense at the  
4 beginning of this, the 17th month of this trial,  
5 whether a document which the Court has ruled, record,  
6 page 29,601, "Admitted on the usual terms," and which  
7 the clerk of the court states in the record, page  
8 29,601, "Defense document 2162 will receive exhibit  
9 No. 3248," and the record further showing, "(Whereupon,  
10 the document above referred to was marked defense  
11 exhibit 3248 and received in evidence)," whether  
12 that document is in evidence and whether such is the  
13 ruling of the majority of the Court and binding upon  
14 every Member of the Tribunal.

15 A very few words more: I would respectfully  
16 inform the Court that every lawyer from the United  
17 States would take for granted that what is received  
18 in evidence is completely in evidence. In our own  
19 courts we are discouraged from reading matters at  
20 length in the record. Sometimes reference is made to  
21 encumbering the record unless it is fairly essential  
22 to so do.

23 On the 30th of July, 1946, the Court through  
24 its President made a ruling precisely covering this  
25 matter, it was thought. I quote from page 2736:



1 "It is the Court's duty to consider  
2 every part of a document which is tendered (received)  
3 in evidence; that is, so far as it is tendered  
4 (received) in evidence, whether the contents of the  
5 document are read in court or not."

6 It may not be necessary to point out that  
7 undoubtedly all counsel would be willing to read any  
8 entire matter into the transcript and some of my  
9 friends on the other side of the table might even  
10 be willing to read the same matter several times for  
11 good measure so that it will be clearly understood.

12 Learned counsel for the United Kingdom has  
13 just informed me that his jurisdiction holds the same  
14 rule as that I have stated prevails in the United  
15 States so we do not apparently have, if he is  
16 correct, that jurisdictional difference.

17 I need not, I am sure, point out that I am  
18 addressing myself to what is in evidence and to be  
19 considered and not to instances where a part of an  
20 instrument is admitted and a part rejected; nor do I  
21 need to emphasize, as a last word, Mr. President, the  
22 keen desire of every Member of the prosecution and,  
23 I am quite sure, shared by defense counsel to do all  
24 that we can to facilitate the examination of the record,  
25 the weighing of the record, and the explanation of our

1 theories and the like for the facility of this Court  
2 which is burdened with such a great, grave problem.

3 THE PRESIDENT: The United States practice  
4 is also the Australian practice. The decision of  
5 July last year was based on the United States practice  
6 and on the Australian practice. The decision was re-  
7 peated again only a week ago by me on an objection by  
8 Mr. Brown of the British prosecution. Since I repeated  
9 that decision on Mr. Brown's objection, at least two  
10 Members, I think, if not three Members of the Tribunal,  
11 have made suggestions that they are going to be bound  
12 or to consider only what is read into the transcript  
13 and I told the counsel on both sides of that as soon  
14 as the opportunity arose. From two of the Members I  
15 have received written notes to that effect. One I  
16 received only this morning as you were addressing me,  
17 Mr. Chief of Counsel.

18 I have no intention of telling you what any  
19 Member has written or said to me without his consent  
20 but I may read what one Member has just written: "The  
21 parts of documents not read by the attorney presenting  
22 them should not be considered in evidence."

23 I read what another Member has written to me  
24 this morning: "If, when a document is admitted, the  
25 whole of the document forms part of the evidence, why



1 have prosecution and defense been reading any part  
2 of the documents at the stage of presentation of the  
3 evidence? They have wasted months of time in read-  
4 ing evidence into the record which upon this theory  
5 was already evidence the moment the documents were  
6 admitted."

7 I am not giving a ruling but, as President  
8 of this Court, I am entitled to reply to the Chief  
9 of Counsel. I insist upon the right.

10 The Member who wrote the last note that I  
11 have read points out that the documents are all sub-  
12 ject to translation and that it must be understood  
13 they are admitted only so far as the translation  
14 extends. That is not contested, if I understand  
15 rightly.

16 I have been satisfied just to state the  
17 facts. I have given no ruling nor had I any inten-  
18 tion of giving one; but the two rulings that I did  
19 give, which were in accordance with American and  
20 British and Australian practice, were not contested  
21 by any Member of this Tribunal when they were given,  
22 and the rulings were exactly to the same effect.

23 MR. KEENAN: Mr. President, of course,  
24 matters that are not translated into the Japanese  
25 language and English language could not be received



1 in evidence in conformity with the provisions of the  
2 Charter, which are binding upon all of us, I take it.  
3 I am sure that the counsel for the accused will agree  
4 with me that we are all in complete accord that noth-  
5 ing has been considered as part of the record in this  
6 case or in evidence unless it has been translated  
7 into both languages.

8 Mr. President, we could give, I think,  
9 very sound reasons why the practice has long pre-  
10 vailed in the United States and, as I am informed,  
11 in Great Britain.

12 Among other reasons, very briefly, would be  
13 that some parts of the record might not seem to be  
14 of importance at the moment to be brought into the  
15 record; and another reason, Mr. President, would be  
16 that a document of considerable length might contain  
17 statistics of other matter that would have to be  
18 weighed, that ought to be subject to examination of  
19 counsel for both sides but need not be spread upon  
20 the record--on the transcript.

21 Mr. President, I with great respect suggest  
22 to this Court that it is a late date to change any  
23 ruling made clearly and unequivocally by the President  
24 of this Court, whom we all assumed spoke for all the  
25 Members of the Court and in their hearing without

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objection in open court.

That ruling, Mr. President, was clear, explicit, and in no need of request for clarification at the time. I raised the point this morning only because of the confusion, the state of confusion, that exists in the record of uncertainty and ambiguity on a vital part of this trial.

Mr. President, Chief of Counsel's powers are strictly limited in the Charter. I can do no more than respectfully request this Court for a clear ruling on this essential point. We are going pretty high, Mr. President. There is no one really above this Tribunal for the moment but the Supreme Being of all.

It may not be, Mr. President, that we are entitled to a ruling from this Court on this state of the record. I can only perform my full duty as Chief of Counsel, and with great respect leave the matter to the wise discretion and judgment of this Court without, of course, reminding it of the grave consequences that hang in the balance awaiting the action of the Tribunal.

THE PRESIDENT: A Member of the Tribunal inquires why, if it was intended that we should read the whole document, such large excerpts from the documents have been read by both parties.



1 MR. COMYNS CARR: Your Honor, at the request  
2 of learned Chief of Counsel, I would just like to say  
3 this in answer to -- or, rather, I respectfully submit  
4 that he has already answered that question. But to  
5 point out the matter which is of immediate practical  
6 importance to us -- and by "us" I think we are speaking  
7 for counsel on both sides -- and that is whether, in  
8 our summations, we shall be permitted to refer to parts  
9 of documents which, in accordance with the previous  
10 rulings of the Tribunal, we have assumed to be in  
11 evidence and, therefore, available to be used in sum-  
12 mation.

13 We cannot presume to endeavor to dictate to  
14 any individual Member of this Tribunal what he shall  
15 read for himself or what he shall not read for himself.  
16 But we submit we are entitled to guidance as to what  
17 we shall be allowed to read or introduce into our  
18 summations; and on that, we submit, it is urgent that  
19 we should have an immediate ruling of the Court, even  
20 if it has to be by majority only, because if we are  
21 not to be allowed to do so it will be necessary for  
22 us to make opportunities of reading into the evidence  
23 now the passages in question.

24 That is all I desire to say.

25 THE PRESIDENT: I understand that the learned



1 Chief of Counsel and the learned British prosecutor  
2 have also represented the views of the defense.

3 MR. YAMAOKA: If the Tribunal please.

4 THE PRESIDENT: Mr. Yamaoka.

5 MR. YAMAOKA: While I and a great number of  
6 defense counsel do agree with and support the views  
7 expressed by the learned Chief of Counsel and the learned  
8 prosecutor from the United Kingdom, I understand that  
9 there are some defense counsel who do not concur in  
10 those views.

11 THE PRESIDENT: If so, we should hear them, or  
12 a representative of them.

13 MR. YAMAOKA: If the Tribunal please, I believe  
14 that the majority of defense counsel are in agreement  
15 with the propositions presented to the Tribunal.

16 THE PRESIDENT: We must hear the minority,  
17 if it is a minority.

18 MR. YAMAOKA: But I do respectfully suggest  
19 that if there are those who do not agree that they be  
20 given the opportunity of presenting their views before  
21 the Tribunal. And I might state, if the Tribunal please,  
22 that in so far as I am concerned, I fully concur in  
23 and support the views of the learned Chief of Counsel  
24 and make a similar request.  
25

THE PRESIDENT: Mr. Cunningham.

1 MR. CUNNINGHAM: If the Tribunal please, I  
2 anticipated that this problem would come up sooner or  
3 later and that it would have to be clarified the same  
4 as happened at Nuernberg. It never was clarified  
5 clearly at Nuernberg whether or not the actual part  
6 which was read into the record became the evidence in  
7 the case.

8 I disagree with Mr. Carr on this premise,  
9 that a majority decision on this matter would not serve  
10 the purpose at all. It must be a unanimous decision  
11 of the policy of this Tribunal as to what is or what  
12 is not to be considered the evidence.

13 THE PRESIDENT: The Charter has something to  
14 say about majority decisions.

15 MR. CUNNINGHAM: This cannot be considered,  
16 as I read the Charter, under any interpretation to be  
17 a decision. This is a matter of policy which must  
18 guide all counsel, all lawyers, all Judges, in con-  
19 sidering what is evidence before the Tribunal, and  
20 it is not a matter of decision as to the admissibility  
21 of evidence or the allowing of a motion.

22 THE PRESIDENT: We decide what evidence we  
23 admit.  
24

25 MR. CUNNINGHAM: That is right.

THE PRESIDENT: And the decision rests with



1 the majority.

2 MR. CUNNINGHAM: There is no question about  
3 that. But after you have admitted it, what the Court  
4 considers has been admitted is the question here.

5 Now, the third observation is, your Honor,  
6 there have been a great many documents admitted in  
7 this Tribunal that have not been read. They have been  
8 referred to and they have been considered or not  
9 considered evidence by some Members of the Tribunal.  
10 It is very difficult to determine from down here what,  
11 up there, is considered evidence.

12 In my case, I have read many of the vital  
13 parts of documents and have left the minor or detailed  
14 parts for the perusal of the Tribunal at its leisure,  
15 or for reference in summation, or to use in any manner  
16 in which I see fit, after it has been admitted.



1 MR. CUNNINGHAM: I was coming to my con-  
2 clusions. I am only on my observations.

3 And on the fourth proposition: there have  
4 been two Members of the Tribunal I have noticed con-  
5 sistently who have withheld the documents which have  
6 been rejected. Now, to what extent they consider  
7 those documents in evidence has become a question with  
8 me the same as this question has become, and it is  
9 an observation which I think is important as to whether  
10 or not those two Members of the Tribunal consider the  
11 rejected documents even as evidence in this case.

12 THE PRESIDENT: You are more vigilant than I  
13 if you noticed that.

14 MR. CUNNINGHAM: Things are sometimes more  
15 apparent from where I sit than where you sit, your  
16 Honor.

17 Now, my final observation is this --it is a  
18 question of vital importance that we should know.  
19 Personally, I am of the opinion that the mechanical,  
20 physical impossibilities go to the conclusion of the  
21 two Judges; that it is an impossibility to read all the  
22 documents which have been introduced in this case, even  
23 in leisure or spare time. At the beginning there was  
24 no imagination that would lead to the conclusion that  
25 this trial would last so long, and this, perhaps, is

1 some justification for the contention of the two  
2 Members of the Tribunal. So I am afraid that in  
3 practice the majority of the Tribunal will probably  
4 find it necessary to follow the judgment of the  
5 minority of the Court, and therefore the rule probably  
6 should be a compromise between that of the minority  
7 and that of the majority in order that we shall know  
8 definitely just exactly where we stand. Therefore,  
9 I suggest that as far as I am concerned I agree  
10 neither with the prosecution nor with a majority of  
11 the defense, nor with a majority of the Tribunal; nor  
12 with a minority of the Tribunal; but I think there is  
13 a middle road there some place that we are going to  
14 have to hit with an understanding.

15 THE PRESIDENT: I feel in duty bound to say  
16 that I know of no contention or conclusion on the part  
17 of two Members of the Tribunal such as Mr. Cunningham  
18 referred to. If they are doing what he says they have  
19 never revealed it to me.

20 Mr. Logan.

21 MR. LOGAN: If the Tribunal please, I don't  
22 know whether I represent the majority or the minority  
23 of the defendants in what I have to say, but what I do  
24 say now I want to say on my own personal responsi-  
25 bility and initiative.



1           The statement by the learned Chief Prosecutor  
2 as to what is the law in America is so accurate and  
3 axiomatic that it seems to me it needs no further  
4 discussion. As an attorney representing one of these  
5 accused I feel that it is my duty to know and to be  
6 able to advise him what is in evidence and what is not  
7 in evidence. If I do not know that I am failing in my  
8 duty as a lawyer. When a decision was made last year  
9 that documents which were received in evidence would  
10 be considered by the Tribunal as evidence even though  
11 they were not read into the transcript, I felt assured  
12 at that time that even if there was only a majority  
13 opinion of the Tribunal that the Tribunal as a whole  
14 would be bound by that majority opinion, just the same  
15 as any judgment, conviction, and sentence at the con-  
16 clusion of the trial will be the judgment of the entire  
17 Court even though it is by a majority. It would seem  
18 to me, with all due respect to the Tribunal, that a  
19 simple proposition as to what is in evidence or what  
20 is not in evidence should be clarified immediately.

21           THE PRESIDENT: It was clarified in July  
22 1946. It was clarified within the last fortnight.  
23 There is nothing to clarify. The only question is  
24 whether we are going to overrule what we have twice  
25 decided. If we admit the whole of a document into



1 evidence and part only is read, the whole of it is  
2 still in evidence. I take no interest in this except  
3 to receive, if one comes, the decision of the majority  
4 to reverse what they have done already twice.

5 MR. LOGAN: If the Tribunal please, I thought  
6 it was clarified last July, too, until this recent  
7 discussion. The problem is worrying me whether or  
8 not two or maybe more of the Judges are going to con-  
9 sider those documents which were not read into the  
10 transcript. If they are not going to consider them  
11 they should be read.

12 THE PRESIDENT: We must preserve orderly  
13 procedure. The decision given in July last year and  
14 repeated in the last fortnight is as clear as day. No  
15 question arises about it. Nobody has moved that the  
16 decision be reversed. I think the learned Chief of  
17 Counsel was under the impression that since that  
18 decision was given in July last year and throughout  
19 the period that evidence has been given since there  
20 has been some doubt. There was no doubt until the  
21 last day or two that I was aware of. There was no  
22 doubt when I repeated the decision on Mr. Brown's  
23 objection within a fortnight, perhaps a week ago,  
24 no doubt revealed to me.

25 MR. LOGAN: Or to us either, your Honor.

1 We were under the impression that it was binding  
2 on the entire Tribunal when it was made last July.  
3 Now the question we would like to know is, is that  
4 majority decision binding on those two other Judges  
5 or is it not, because if it is not that evidence  
6 should be read.

7 THE PRESIDENT: We would like to hear the  
8 other viewpoint.

9 We will recess for fifteen minutes.

10 (Whereupon, at 1045, a recess was  
11 taken until 1115, after which the proceed-  
12 ings were resumed as follows:)  
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1 MARSHAL OF THE COURT: The International  
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: -- review the decision of the  
4 Tribunal given in July 1946 and repeated recently. If  
5 the whole of a document has been tendered in evidence,  
6 but only part has been read, it will be open to any  
7 counsel on summation to refer to unread parts, if  
8 necessary or desirable in his viewpoint.

9 OFFICIAL COURT REPORTER: Mr. President, the  
10 first few words of your statement didn't come over the  
11 IBM.

12 THE PRESIDENT: No Member of the Tribunal desires  
13 to review the decision of the Tribunal given in July  
14 1946 and repeated recently. If the whole of a document  
15 has been tendered and received in evidence, but only  
16 part has been read, the unread part may be referred to  
17 in summation, if necessary or desirable in the view of  
18 the particular counsel.

19 MR. LOGAN: Well, if the Tribunal please, I  
20 think that still leaves the question unanswered. I  
21 understood fully the Tribunal's decision as a whole,  
22 but how about those two Judges; are they still going to  
23 exclude evidence which is not read into the transcript?  
24 I think that is important for all of us to know.

25 THE PRESIDENT: The two Judges referred to are



1 not keeping those copies for the purposes of using  
2 them in this trial. I mean copies of rejected docu-  
3 ments.

4 All eleven Judges adhere to the decision of  
5 July 1946, repeated recently. I cannot make it plainer.  
6 I won't attempt to.

7 MR. LOGAN: In my statement before the recess,  
8 I was not referring to nor did I use the words "rejected  
9 documents." Mr. Cunningham, I believe, referred to the  
10 rejected documents. I was not talking about them. I  
11 was talking about documents which are in evidence, parts  
12 or maybe the whole of which has not been read into the  
13 transcript. That is the only thing to which my remarks  
14 were addressed.

15 THE PRESIDENT: Captain Brooks.

16 MR. BROOKS: Mr. President, I think if that  
17 remark is carried further and is not referred to in  
18 summation, the unread part and the unreferred part of  
19 material in evidence, that the Court -- Are these  
20 Judges to consider that part where it is neither referred  
21 to or read, but is still in evidence?

22 THE PRESIDENT: Every one of the eleven Judges  
23 is satisfied that he is at liberty to consider and he  
24 will consider, if necessary, the whole of any document  
25 which is wholly admitted into evidence. There couldn't be

1 any clearer statement. He will not consider himself  
2 limited to the part read into the transcript.

3 MR. BROOKS: I thought, before the recess,  
4 that the Court wanted to hear some of the other views  
5 on that subject before it ruled and I thought that  
6 Mr. Logan was going to speak and I did want to be heard  
7 on that point, because I do not believe the general rule  
8 should be followed.

9 THE PRESIDENT: You have no right to be heard  
10 except by the grace of the Tribunal, because we have  
11 given our decision twice. We have considered it the  
12 third time and we have adhered to it and that is the  
13 end of the matter. To hear further argument would be  
14 to suggest that we are prepared to consider it a fourth  
15 time, and we are not.

16 MR. BROOKS: I understand, your Honor. I  
17 thought I had been invited prior to the recess to make  
18 those remarks. I do have some submissions on that point  
19 which would have to come by the grace of the Court. I  
20 thought possibly the Court had misunderstood that we had  
21 not been fully heard on both sides.  
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1 THE PRESIDENT: Mr. YAMAOKA.

2 MR. YAMAOKA: If it please the Tribunal, I  
3 will propound further questions to this witness along  
4 the lines I indicated earlier this morning.

5 DIRECT EXAMINATION

6 BY MR. YAMAOKA (Continued):

7 Q Mr. HORINOUCI, yesterday you stated that you  
8 were present at some of the conversations between  
9 Ambassador Craigie and Foreign Minister HIROTA prior  
10 to October 27, 1937.

11 A Yes, I so said.

12 Q Will you please state what was said at these  
13 conversations?

14 A Ambassador Craigie proposed that he would  
15 like to do anything within his power to assist in  
16 recovering peace between Japan and China. To that,  
17 Foreign Minister HIROTA stated that it was his desire  
18 to have the assistance of Great Britain, which he felt  
19 was held in confidence and trust by China.

20  
21 However, at first, Foreign Minister HIROTA  
22 expressed the desire that, inasmuch as he hesitated  
23 to present terms of settlement as a representative of  
24 the Japanese Government, he would like, if possible,  
25 to have the matter broached through -- that he would  
like to have the terms proposed through trustworthy --



1 proposed as of coming from very reliable, trustworthy  
2 channels or quarters. To this, Ambassador Craigie  
3 said that that would not do, and they would like to  
4 convey the proposal as coming from the Japanese  
5 Foreign Minister.

6 Thereupon, Foreign Minister HIROTA said  
7 that his name may be quoted, but only as coming from  
8 the Foreign Minister as his individual views. To  
9 this, Ambassador Craigie consented.

10 Such a procedure is customarily used in  
11 diplomatic negotiations. At first, informal talks  
12 are held, and gradually these talks develop into more  
13 formal conversations. Such steps were taken in this  
14 instance.

15 At that time, Foreign Minister HIROTA ex-  
16 pressed his personal views in, if I recall correctly,  
17 four or five points.

18 One of them was a proposal to have the troops  
19 of Japan -- to have a demilitarized zone created in  
20 North China and that the Japanese and Chinese troops  
21 withdraw from that particular zone.

22 Another point mentioned by the Foreign Mini-  
23 ster was a desire to adjust the relations on a prac-  
24 tical basis between Manchukuo and North China.  
25

A third point was a desire to have China

1 control the anti-Japanese movement then going on in  
2 that country.

3 He also expressed the desire to have recog-  
4 nized the principle of equal economic opportunities  
5 in the region of North China.

6 These views of Foreign Minister HIROTA were  
7 conveyed by Ambassador Craigie to the Chinese Govern-  
8 ment, and the desires thereon of the Chinese Govern-  
9 ment were conveyed on two or three occasions to the  
10 Foreign Minister by Ambassador Craigie.

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1 Q Will you please state the circumstances and  
2 reasons regarding the resignation of Foreign Minister  
3 HIROTA in May, 1938, if you know?

4 THE PRESIDENT: Mr. Comyns Carr.

5 MR. COMYNS CARR: Your Honor, in our submis-  
6 sion this is going altogether beyond the length of  
7 supplementary questions usually allowed. There was  
8 nothing to prevent either of these matters being dealt  
9 with in the affidavit, if the witness can deal with  
10 them.

11 THE PRESIDENT: There is no reason why this  
12 should not have been included in his affidavit. The  
13 direction regarding the use of affidavits will become  
14 a dead letter if we allow extensive examination in addi-  
15 tion.

16 MR. YAMAOKA: Well, if the Tribunal pleases,  
17 I think that I have only put to this witness probably  
18 four questions.

19 THE PRESIDENT: That is a matter for the Tri-  
20 bunal's discretion, but we have to keep in view that  
21 we require affidavits. We have not given any decision  
22 that you were not aware of that forces you to take this  
23 course.

24 MR. YAMAOKA: If the Tribunal please, that is  
25 my last question. I do not intend to ask any further



1 ones.

2 THE PRESIDENT: Unless you can give a good  
3 reason for not having this in the affidavit, we are not  
4 going to allow it, Mr. Yamaoka. That is the majority's  
5 decision.

6 MR. YAMAOKA: The affidavit, if your Honors  
7 please, merely states that Mr. HIROTA resigned in May,  
8 1938. It does not amplify that statement any more than  
9 that, as I recall it. My co-counsel suggested that this  
10 matter be amplified and that is the reason why I am  
11 doing so. I requested the permission of the Tribunal  
12 yesterday about it.

13 THE PRESIDENT: What do you want to amplify?  
14 You want him to give his reason for his resignation?

15 MR. YAMAOKA: Yes, if your Honor please.

16 THE PRESIDENT: I am afraid my colleagues, or  
17 a majority of them, are adamant. They won't allow the  
18 question.

19 MR. YAMAOKA: Well, then, that closes the ex-  
20 amination in chief of this witness. The witness is  
21 available for cross-examination.

22 THE PRESIDENT: Mr. Comyns Carr.  
23  
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## CROSS-EXAMINATION

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1 Q Well, follow it in either English or Japanese.

2 In paragraph 5 you set out three terms which  
3 you say were agreed between General HASHIMOTO and the  
4 Chinese 29th Army on the 11th of July. I am asking you  
5 whether those were the terms on which the cabinet on  
6 the 9th of July, according to your information, decided  
7 that the local settlement should be made.

8 A These terms were decided on the spot. In my  
9 recollection these terms were not discussed by the  
10 cabinet on July 9.

11 Q Then, are you telling us that the cabinet on  
12 the 9th of July left it to the local commander to en-  
13 force any terms he thought fit?

14 A No, that is not so.

15 Q Then, what are you saying?

16 A Two major principles were decided upon by the  
17 cabinet at this meeting of July 9. The first of these  
18 two major principles was that every effort be made to  
19 all possible extent to seek a peaceful settlement of  
20 the affair, and the second point of the two principles  
21 is that the settlement shall be made locally.

22 Q Yes, but what I am asking you is this: Did  
23 the cabinet, according to what you were told, on the  
24 9th of July decide what were the terms to be demanded,  
25 or did they leave that to the local commander?

1       A    The policy decided upon by the cabinet at  
2 that meeting was to see to it that the incident be  
3 settled promptly on the spot, and that the military  
4 authorities on the spot were to negotiate with the  
5 Chinese side with this policy in mind, and that nego-  
6 tiations as to concrete terms were to be conducted on  
7 the spot.

8       Q    Now would you mind answering the question?  
9 Were the terms left to the discretion of the local  
10 commander?

11       A    Inasmuch as the cabinet was not informed of the  
12 full details of the situation as of July 9, the de-  
13 cision made by the cabinet was only with reference to  
14 general policy in the handling of the situation, that  
15 the army authorities on the spot were instructed to  
16 effect a speedy -- were to effect a speedy settlement  
17 with the Chinese on the spot in accordance with the  
18 situation prevailing there.

19       Q    Then, the answer to my question was yes, it was  
20 left to the local commander to decide the terms?

21       A    That is not so; I didn't say anything of the  
22 kind. Negotiations were to be conducted on the spot,  
23 but the final decisions thereto were to be made by the  
24 Japanese government.

25       Q    According to you, then, in the view of the cabi-



1 net and of HIROTA, any terms which the local commander  
2 might secure from the local Chinese commander would  
3 not be effective unless they were approved by both the  
4 Chinese and Japanese governments, is that right?

5 A Yes, with regard to agreements between govern-  
6 ments.

7 Q What do you mean by that qualification?  
8 Either the terms negotiated by the army were to be  
9 final or they were to be subject to the approval of the  
10 governments. Which do you mean?

11 A Yes, the terms are effective in so far as they  
12 concerned the armies of both sides on the spot.

13 Q Well, now, was it also left to the discretion  
14 of the local commander what means he should adopt to  
15 compel the Chinese army on the spot to accept his  
16 terms?

17 A As I have said before, the general policy was  
18 to effect a prompt local settlement in accordance with  
19 the peaceful policy of non-expansion and non-aggrava-  
20 tion of the Incident. The military commander on the  
21 spot was permitted to conduct negotiation of terms of  
22 settlement in so far as they accorded with this general  
23 principle or policy.  
24

25 THE MONITOR: "In so far as he ..."

Q Do you think that is an answer to the question?

1 A I think so.

2 Q Try again; I will repeat it.

3 Was it also left to the discretion of the  
4 local commander what means he should adopt to compel  
5 the Chinese local army to accept his terms?

6 A He was instructed, or ordered to carry on ne-  
7 gotiations.

8 Q When you saw the terms which you have set up  
9 in paragraph 5, it was obvious to you and HIROTA, was  
10 it not, that nobody would have accepted them except  
11 under threat of force?

12 A No, that was not the case.

13 THE PRESIDENT: Mr. Carr, I think this is a  
14 convenient time to adjourn. We will adjourn until half-  
15 past one.

16 (Whereupon, at 1200, an adjourn-  
17 ment was taken.)  
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## AFTERNOON SESSION

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2 The Tribunal met, pursuant to recess, at  
3 1330.  
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5 THE PRESIDENT: With the Tribunal's permis-  
6 sion, the accused KAYA will be absent from the court-  
7 room for the whole of the afternoon session confer-  
8 ring with his counsel.

9 Mr. Comyns Carr.

10 - - -

11 KENSUKE HORINOUCI, called as a  
12 witness on behalf of the defense, resumed the  
13 stand and testified through Japanese interpre-  
14 ters as follows:

15 BY MR. COMYNS CARR (Continued):

16 Q Mr. HORINOUCI, you, the Foreign Office,  
17 had representatives of your own in various parts of  
18 China, hadn't you?

19 A Yes, that is so.

20 Q Did you instruct them to find out what were  
21 the real facts as to the original outbreak of the  
22 incident?

23 A I do not recall whether any particular or  
24 special instruction was sent out.  
25

1           Q   Did you or, rather I should say, did Mr.  
2   HIROTA tell them to find out what was the Chinese  
3   version of that matter?  
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1           A    I do not recall whether any special instruct-  
2    ion to that effect was sent out to our representatives  
3    in the field, but our representatives in the field,  
4    in the line of duty, as a matter of course, reported  
5    everything to the Foreign Office, anything which they  
6    themselves heard or learned about.

7           Q    Did you discover that the Chinese denied the  
8    Japanese Army's version of the matter?

9           A    Yes, we confirmed some. The Chinese con-  
10   firmed some parts of the Japanese version and denied  
11   others.

12          Q    Did you make any independent investigation  
13   to find out which was true?

14          A    The Foreign Office considered and studied  
15   information received from all available and possible  
16   sources as well as the views of the Chinese authori-  
17   ties themselves.

18          Q    And did HIROTA accept the Japanese Army's  
19   story?  
20

21          A    No, he did not take it all in.

22          Q    Look at the second of the terms mentioned  
23   in paragraph 5. Whatever the truth was, the trouble  
24   had arisen because the Japanese forces chose to hold  
25   their maneuvers right up against the position where  
the Chinese forces were entitled to be stationed,

1 didn't it?

2 A I do not think so.

3 Q Why was it the Chinese had to withdraw from  
4 a place where they were entitled to be in order not  
5 to cause untoward incidents?

6 A It was my understanding that both the Japn-  
7 ese and Chinese sides negotiated in order to satisfy  
8 their mutual interests to avoid any further trouble  
9 from developing between the two parties.

10 It was my understanding that, in order to  
11 avoid any further trouble, such matters -- it was  
12 discussed between the two parties in order to satis-  
13 fy their mutual and respective interests in order to  
14 arrange so that the troops on both sides would be  
15 kept apart.

16 Q Now, I come to the Cabinet meeting of the  
17 11th of July in paragraph 6 of your affidavit. You  
18 say, at the top of page 3 in the English version,  
19 that "the following results were reported afterwards."  
20 Who reported them?

21 A I heard this from the Foreign Minister.

22 Q Why didn't you say so in your affidavit?

23 A I thought this would be sufficiently clear.

24 Q Wasn't this the actual result of that Cabinet  
25 meeting, that the Cabinet made an important determina-



1 tion and decided to take necessary steps in connection  
2 with the despatching of troops to North China?

3 A The contents are set forth in my affidavit  
4 and it is -- the situation was as it is written there.

5 Q Would you mind answering my question: Did  
6 not what I put to you correctly represent the result?

7 A That is not so. It is as I have set forth  
8 in my affidavit, that in case of any eventuality or  
9 exigency preparations need to be considered in consid-  
10 eration of such eventualities.

11 Q Did the Foreign Ministry --

12 THE MONITOR: Preparations for mobilization.

13 Q (Continuing) Did the Foreign Ministry accord-  
14 ingly take a hasty measure for strengthening the  
15 staffs of the diplomatic offices in North China?

16 A That I do not recall.

17 Q Do you know that what I have been reading to  
18 you is from the Office Report for 1937 published by  
19 the Secretariat of the Foreign Ministry on December  
20 1 in that year?

21 A I do not know.

22 MR. COMYNS CARR: That is exhibit 260,  
23 record page 3486.

24 Q Now, is it a fact that the War Minister in-  
25 sisted upon sending immediate reinforcements to the

1 five thousand men in Tientsin?

2 A I have not heard of that.

3 Q And that the whole Cabinet consented to  
4 his proposal, including HIROTA?

5 A I have not heard of that.

6 Q Did the War Minister say after the Cabinet  
7 that he would send a large force to smash the oppo-  
8 sition and settle the issue in a short time?

9 A To whom?

10 Q To the Emperor.

11 A Not being close to the Emperor, I do not  
12 know.

13 Q Now, immediately after that Cabinet meeting,  
14 namely on the morning of the 12th, did the message  
15 come in stating that the Chinese had agreed to the  
16 terms you've mentioned in paragraph 5?

17 A That I do recall.

18 Q And did the message say, "It is a very sin-  
19 cere answer"?

20 A I do not recall such adjectives in the mes-  
21 sage.

22 Q Did the Army General Staff express the view  
23 that this was a Chinese ruse to make the Japanese  
24 stop their military preparations?

25 A I do not recall.



1 Q And were the reinforcements sent both from  
2 the Kwantung Army and the Chosen Army in spite of the  
3 Chinese having accepted those terms?

4 A They accepted but did not carry it into  
5 execution yet.

6 Q But you know you have said in the last sentence  
7 but one of paragraph 5 of your affidavit, "These terms  
8 seemed to be carried by the Chinese into execution  
9 somehow or other before July 22." You now want to  
10 say that is untrue?

11 A I do not know how my words in the affidavit  
12 have been translated in the English, but in Japanese  
13 I said that it seems as though that the terms would  
14 be carried out. I did not say that they were carried out.

15 Q You read English, you told us, as well as  
16 Japanese, don't you?

17 A I should like to have the English shown to  
18 me again.

19 Q Haven't you read the English translation of  
20 your affidavit before you came into court?

21 A I read it through once; but, in as much as  
22 now the purport of my statement is as set forth in  
23 the Japanese text and I cannot reply with any confi-  
24 dence without seeing the English translations, I should  
25

1 like to be shown the English text.

2 MR. COMYNS CARR: May he be shown the English  
3 text, please?

4 (Whereupon, a document was handed  
5 to the witness.)

6 MR. COMYNS CARR: Page 2, the third sentence  
7 from the bottom, beginning "These terms seemed to be  
8 carried by the Chinese" --

9 THE PRESIDENT: Third paragraph from the  
10 bottom.

11 THE WITNESS: The English may convey such  
12 a meaning, but what I really wish to say has been set  
13 forth with clarity in the Japanese text.

14 MR. COMYNS CARR: Your Honor, I will ask  
15 that Major Moore should report upon that point.

16 THE WITNESS: I would like to speak some  
17 more. I should like to point out that even in the  
18 English text of my affidavit the words are "seemed to be"  
19 and not "to have been."

20 Q Did you take the view which I put to you as  
21 that of the General Staff, that the agreement by the  
22 Chinese was merely a ruse to stop the Japanese mili-  
23 tary preparations?

24 A I have never thought of it that way.

25 THE PRESIDENT: Mr. Carr, that distinction



1 he drew is no distinction at all if you read the whole  
2 of that little paragraph. "Seemed to be carried out"  
3 means "seemed to have been carried out" because he  
4 speaks of the period before July 22.

5 MR. COMYNS CARR: Yes, your Honor.

6 Q Now, may I have an answer to my original  
7 question: Were the contingents from the Kwantung  
8 Army and the Chosen Army, to which you refer in para-  
9 graph 6 of your affidavit, in fact sent into North  
10 China immediately after the 11th of July?

11 A The Foreign Office at that time was not  
12 familiar with the details of military movements or  
13 operations.

14 Q If you were really trying to check military  
15 expansion, was it not essential for you to find out  
16 what they were doing?

17 A Every effort was made to inform ourselves;  
18 but as to when, at what time, what type of military  
19 actions or operations were to take place, such matters  
20 belonged to the category of strict military secrets  
21 and were known only to those who were vitally con-  
22 cerned with such action or who were directly con-  
23 cerned with such action.  
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Q But you have told us in paragraph 6 that the cabinet decided on the 11th of July that those reinforcements were to be sent. When the news came that the Chinese had accepted the Japanese Army's terms, did Mr. HIROTA take no steps to find out whether that reinforcement had been canceled or was continuing?

A As I have said before, the Chinese military authorities accepted the terms but we had at that time received no reports that they had carried out those terms.

Q Now try to answer the question.

A I do not know whether or not the Foreign Minister took any steps to find out what measures had been taken or were being taken.

Q But you know, Mr. HORINOUCI, you have professed, have you not, throughout this affidavit to be able to tell us everything that the Foreign Minister said and did--

MR. YAMAOKA: If the Tribunal please, I object to the characterization of this witness' testimony by my learned friend. The affidavit states exactly the source of his information and the extent of it.

MR. COMYNS CARR: It does not state the source.

MR. YAMAOKA: I further respectfully submit that this is arguing with the witness.



1 THE PRESIDENT: He can deny it if he wishes.  
2 He said something very like it in an affidavit which  
3 has been rejected; however, we are not to take it into  
4 consideration.

5 Q Can you or can you not say whether Mr. HIROTA  
6 took any steps to find out whether these reinforcements  
7 had, in fact, been sent?

8 A I have no recollection.

9 Q Do you not know very well yourself that they  
10 were, in fact, sent?

11 A Yes, I heard of it later.

12 THE PRESIDENT: I think paragraph 21 justifies  
13 Mr. Comyns Carr's description of this affidavit.  
14 That has been admitted in evidence and it reads:  
15 "Foreign Minister HIROTA always gave careful consideration  
16 to safeguarding the interests of the third powers  
17 in China."

18 Q Now coming to paragraph 8, you say in the  
19 second sentence: "Meanwhile, we successively received  
20 authoritative reports that the Nanking Government, in  
21 spite of our representations made at Nanking as well  
22 as at Tokyo, were despatching reinforcements, troop  
23 after troop, to North China." From whom did you get  
24 those reports?  
25

A Reports from the army as well as from Foreign

1 Office authorities.

2 Q Those troops were being moved by the Chinese  
3 Government in Chinese territory, were they not?

4 A That is so.

5 Q What right had you to object?

6 A Not object but negotiate.

7 Q Was the position which you took up that the  
8 Japanese Army could send what reinforcements it  
9 liked into Chinese territory but the Chinese Army must  
10 not move reinforcements within their own territory?

11 A No, not so.

12 Q But that is what it amounted to, wasn't it?

13 A Such negotiations were carried out mutually  
14 between the two parties in an effort to avoid oppor-  
15 tunities for clashes between the opposing forces.

16 Q You mean that there would be no clashes if  
17 the Japanese troops went there and the Chinese troops  
18 did not, don't you?

19 A No, that is not what I mean.

20 Q At the end of that paragraph you say: "The  
21 Foreign Office, thereupon, ordered Councillor HIDAKA  
22 by wire on July 16 to call upon the Nanking Government  
23 not to interfere with the execution of the three terms,  
24 and to check the northward movement of the Chinese  
25 Central Armies." What right had you to do that?



1           A    It is natural that by such negotiations a  
2           peace settlement could be effected.

3           Q    This morning you told me that it was not  
4           left to the discretion of the location commanders to  
5           settle what terms they pleased but that the two  
6           governments would have to confirm them. Why then  
7           did HIROTA call upon the Nanking Government not to  
8           interfere with them?

9           A    There were prospects that the matter could  
10          be settled by a local settlement of the incident  
11          and although the -- because we entertained the idea  
12          that there were prospects of reaching a settlement  
13          locally and we desired from our part that the Nanking  
14          Government would approve of this idea of a local  
15          settlement and would assist in the execution of the  
16          terms reached.

17          Q    Now I will come to paragraph 11. There you  
18          refer to a draft of terms which you say was approved  
19          on August 5 or 6 by HIROTA, SUGIYAMA, Minister of the  
20          Navy and the Premier. Where is it?

21          A    I recall the draft which existed at that time.

22          Q    Where is it now?

23          A    That I do not know.

24          Q    Have you taken any steps to find out?

25          A    I did try but because many of the files of

1 the Foreign Office have been burnt I was unable to  
2 locate it.

3 Q But you know this is not one of the documents  
4 which either you or Mr. HAYASHI have sworn was burnt.  
5 If you found out it was burnt why did you not include  
6 it in your affidavit as having been burnt?

7 A I thought there was no objection to testify-  
8 ing from memory.

9 THE PRESIDENT: Mr. Yamaoka.

10 MR. YAMAOKA: If the Tribunal please, that  
11 document is on our order of proof and is numbered  
12 2066. It has not yet been submitted but is on the  
13 order of proof.

14 THE PRESIDENT: It was not burnt as the  
15 witness suggested?

16 MR. YAMAOKA. No.

17 MR. COMYNS CARR: I will pass on while it is  
18 being found. Oh, here it is.

19 The document which has been handed to me,  
20 No. 2066, is nothing of the kind. It is a telegram.  
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1 Q Where is the document which you say was  
2 approved on the 5th or 6th of August by these four  
3 ministers?

4 A I have already replied to that question.

5 Q In paragraph 12 you refer at the end to the  
6 Shanghai Incident on August 9th. What line did Mr.  
7 HIROTA take, according to you, about the Shanghai  
8 Incident?

9 A He did his best to have the Incident settled  
10 locally.

11 Q And for the purpose of getting it settled  
12 locally did he express approval to increasing the  
13 number of Japanese Marines in Shanghai, and of the  
14 sending of additional Japanese ships of war there?

15 A Foreign Minister HIROTA did everything in  
16 his power to seek a local settlement of the Incident.

17 Q Answer the question.

18 A Foreign Minister HIROTA had no alternative  
19 but to give his approval to the action just referred  
20 to by you, Mr. Prosecutor, because in spite of the  
21 existence of a demilitarized zone in Shanghai, the  
22 Chinese Peace Preservation Corps infiltrated into that  
23 zone, creating an extremely dangerous situation, causing  
24 thereby the need to protect the lives and property of  
25 the Japanese residents, as well as secure the safety

1 of the very small Japanese Naval landing party there.

2 Q The answer, then, is that he did give his  
3 approval?

4 A I think that he gave his consent when the  
5 question arose at a meeting of the cabinet.

6 Q Referring to document 11, reading four lines  
7 there, did he say this: "On the 13th of August 1937  
8 the causes of the Incident were the assassination of  
9 Lieutenant OYAMA, the rousing of considerable excite-  
10 ment in Shanghai by the increased number of Japanese  
11 warships, and the increasing of the number of Japanese  
12 Marines to 3000"?

13 A I have no recollection of ever having heard  
14 of that.

15 Q Now, about this assassination of Lieutenant  
16 OYAMA, did you take any steps, did Mr. HIROTA take any  
17 steps to ascertain the true facts about that?

18 A Various reports on the case were assembled  
19 and studied.

20 Q And did you come to the conclusion that the  
21 reports from the Japanese Navy on the subject were  
22 obvious nonsense?

23 A There was no such case. Every effort was made  
24 to study and contrast, compare the reports sent also  
25 by the Japanese Foreign Office authorities on the spot,



1 in order to find out the true facts of the case.

2 Q Now will you answer my question? Did you  
3 not conclude that the Japanese Navy reports were obvious  
4 nonsense?

5 A I did not consider them as nonsense.

6 Q Now then, on the 12th of August, 1937  
7 did the Cabinet meet and did HIROTA report to you  
8 that they had decided as follows:

9 "If we should announce the issuing of the  
10 mobilization order, then the situation will be  
11 troublesome, so that at yesterday's (12th of August)  
12 Cabinet meeting it was decided that the mobilization  
13 orders will be issued but not announced?"

14 A I have no recollection.

15 Q Now, with regard to paragraph 14 of your  
16 affidavit, where you speak of negotiations in  
17 September, on the 24th of September, 1937, did the  
18 Cabinet decide to mobilize four Divisions and have  
19 another four Divisions in readiness?

20 A I think there was something to that effect.

21 Q Now, you have told us about discussions between  
22 Mr. HIROTA and Sir Robert Craigie, and you purported  
23 to give us your recollection of the terms which Mr.  
24 HIROTA said would be proposed as his personal opinion.  
25 Were these really the terms which he proposed on or

1 about the 26th of September, 1937? In the first place,  
2 do you say that it was HIROTA who approached Sir Robert  
3 Craigie, or Sir Robert Craigie who approached HIROTA?

4 A The approach was made by Ambassador Craigie,  
5 who said he would be happy to assist in the negotiations  
6 for peace between Japan and China.

7 Q Yes. Did HIROTA say this: " This is my  
8 personal idea, but according to my plan, (1) I would  
9 draw a line slightly south of Tientsin and Peiping,  
10 and would work out a demilitarized zone, and both  
11 Japanese and Chinese troops will not be stationed in  
12 this area"?

13 A The terms were as I stated this morning.

14 Q Will you answer the question? You have  
15 mentioned one term not dissimilar from that. Do you  
16 differ from what I have read to you?

17 A I cannot acknowledge the fact that the expres-  
18 sion is correct or accurate, word for word.  
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Q "(2) The recognition of Manchukuo"?

A I do not recall whether the word "recognition" was actually used.

Q "(3) The ceasing of anti-Japanese movements"?

A Yes.

Q "(4) Defense against communism"?

A Yes.

Q "(5) The maintenance of equal rights in China"?

A My understanding is that the words were "equal opportunities."

Q Now those terms, there is only one substantial difference between those terms as I have read them to you and what you said this morning, and that is the recognition of Manchukuo. First of all, with regard to the first one. Was this place which was to be a demilitarized zone Chinese territory?

A Yes.

Q And what right had you to demand or had HIROTA to demand that Chinese troops should be turned out of Chinese territory?

A There was no permanent meaning to that at all. It was simply a temporary measure to avert any possible clashes between Chinese and Japanese forces.

Q And what right had Japanese troops to be

1 there anyway?

2 A Japanese -- Japan had the right to station  
3 troops in North China under the provisions of the  
4 Boxer Protocol.

5 Q Yes. But not where she pleased, only in  
6 certain places?

7 A Of course, they were conducted in accordance  
8 with the original provisions, but there were some  
9 gradual departures from that -- departures from time  
10 to time.

11 Q By the 26th of September, 1937, they were  
12 covering a large area not mentioned in the Boxer  
13 Protocol, were they not?

14 A That was as a result of hostilities.

15 Q Yes. Now, with regard to these other four  
16 terms, recognition of Manchukuo, ceasing of anti-  
17 Japanese movements, defense against communism --  
18 those three -- had not HIROTA for years been trying  
19 to persuade the Chinese Government to agree to those  
20 terms?

21 A Yes.

22 Q And was he not now using the opportunity  
23 of the Japanese Army's successes to compel them to  
24 do so?

25 A No.



1           Q   But he was putting them forward as the  
2 terms on which the incident was to be settled, as  
3 you have told me?

4           A   It is my understanding that Mr. HIROTA con-  
5 sidered this to be the most opportune moment to  
6 effect a fundamental -- to bring about a fundamental  
7 peace and good will between Japan and China.

8           Q   But was not the position, that he was using  
9 the fact that a state of warfare was in existence  
10 and the successes of the Japanese Army, to try and  
11 compel them to adopt what they had not been willing  
12 to adopt in years of negotiation?

13          A   That is not the case at all. It was nothing  
14 in the nature of an ultimatum, and they were merely  
15 terms which Mr. HIROTA had Ambassador Craigie convey  
16 to the Government of the Chinese people, to the  
17 Chinese Government as his own personal views and to  
18 invite the Chinese to enter into negotiations on the  
19 basis of the proposal.

20          Q   As a way of escaping from the warfare which  
21 was in progress, wasn't it?  
22

23          A   No.

24          Q   Now, in paragraph 14, the second part, you  
25 refer to a document accepted by the Premier, the Foreign  
Minister, the War Minister, and the Minister of the

1 Navy on the first of October, 1937.

2 May he look at IPS document 1634-N, please,  
3 the original.

4 Does that bear the signatures or seals of  
5 those four ministers?  
6

7 A Yes.

8 Q Is it dated October 1, 1937?

9 A Yes.

10 Q Is it the document you are referring to?

11 A Yes.

12 MR. COMYNS CARR: Now, I desire to tender  
13 it in evidence, if your Honor please.

14 THE PRESIDENT: Admitted on the usual terms.

15 CLERK OF THE COURT: Prosecution document  
16 1634-N will receive exhibit No. 3262.

17 (Whereupon, the document above  
18 referred to was marked prosecution exhibit  
19 No. 3262 and received in evidence.)  
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1 MR. YAMAOKA: If the Tribunal please, we  
2 should like to have the privilege of at least seeing  
3 the document to see if we have any objection at all to  
4 it.

5 THE PRESIDENT: In view of his admissions,  
6 you could not possibly have any objection. But you  
7 should see a copy of it, Mr. Yamaoka.

8 MR. COMYNS CARR: Language Division, I propose  
9 to read and would like simultaneous translation,  
10 beginning at the beginning.

11 THE MONITOR: Yes, sir.

12 MR. BROOKS: Can some of the other counsel  
13 have copies of that, too, if your Honor please?

14 (Whereupon, documents were distributed  
15 to counsel.)

16 MR. COMYNS CARR: (Reading) "An Outline  
17 Regarding the Settlement of the China Incident.

18 "(Note on the margin: Oct. 1 - Signatures  
19 of Premier, Army, Navy and Foreign Ministers)

20 "General Provisions.

21 "1. General Policy:

22 "The present incident will be brought to a  
23 speedy conclusion through the efforts of armed forces  
24 combined with timely diplomatic action and with making  
25 China abolish her anti-Japanese and pro-Communistic

policy, and establishing a truly bright and lasting  
1 friendship between Japan and China. We will make the  
2 realization of bringing about harmony and co-prosperity  
3 between Japan, Manchuria and China our main objective.  
4 In order to withstand lengthy use of military force,  
5 depending upon the situation, necessary measures will  
6 be taken to meet the need.

7 "2. Military Operations:

8 "Military operations will have China's speedy  
9 relinquishment of her hostile intention as their  
10 objective and the exercising of military force, the  
11 occupation of key points, and other various operations  
12 that become necessary for this objective, shall be taken  
13 as the occasion calls.

14 "3. Diplomatic Measures:

15 "The objective of the diplomatic measures will  
16 be to urge China's reconsideration of her hostile atti-  
17 tude towards Japan and induce her into a position that  
18 we desire. With China and third powers, opportune  
19 negotiations and operations will be carried out. On  
20 concluding the incident, China will be made to give up  
21 her anti-Japanese and pro-Communist policies, and  
22 diplomatic negotiations will be conducted along lines  
23 of epoch-making diplomatic readjustment, unbiased by  
24 the past circumstances between Japan and China.  
25



1 "4. In employing military and diplomatic  
2 measures and other necessary steps involved in this  
3 operation, utmost care should be exercised not to  
4 overstep the limits fixed by international law.

5 "Criterion.

6 "1. Use of Military Force:

7 "(1) The principal areas where land forces  
8 will operate are mainly Hopeh-Chahar and Shanghai.

9 "(2) In areas where it is necessary, sea and  
10 air operations be conducted.

11 "2. Preparations for total national strength:

12 "To make the conducting of operations smooth  
13 and to cope with the possibility of a change for the  
14 worse in the international situation, various national  
15 functionary facilities such as, enforcement of nation-  
16 wide mobilization, enactment of wartime laws, reali-  
17 zation of durable national unity, will be resorted  
18 to as it becomes necessary.

19 "3. Plans to be taken in regard to North  
20 China:

21 "The solution of the North China problem aims  
22 at the realization of co-existence and co-prosperity  
23 among the three countries -- Japan, China and Man-  
24 churia -- its major objective being to truly make  
25 North China a bright and cheerful district under the

Chinese Central Government.

1           "4. Plans to be taken in regard to Central  
2 and South China:

3           "In Central and South China, we look forward  
4 to a situation suitable for the advancement and develop-  
5 ment of Sino-Japanese trade and commerce.

6           "5. Measures to be taken in regard to the  
7 rear-operation zones of North China:

8           "Measures to be taken in regard to the rear-  
9 operation zones in North China during the incident will  
10 shake off the idea of its being occupied enemy terri-  
11 tory, and for the most part the zone will be governed  
12 as follows:

13           "(1) No administration will be conducted  
14 in the occupied territory; security will be maintained,  
15 however, under the leadership of military forces.

16           "(2) The administrative organ will be left  
17 to independent organization by the natives; however,  
18 proper guidance will be given so that it may be made  
19 a bright institution.

20           "(3) The management of communication and  
21 exploitation of natural resources necessary for  
22 military purposes will be carried out under necessary  
23 control.

24           "However, Items (2) and (3) above will not  
25



1 affect readjustment talks on diplomatic relations  
2 which take place after the amicable settlement."

3 And then, I hardly think I need to read the  
4 first half of the next page, unless my friends want  
5 it; but coming down to the middle--

6 THE PRESIDENT: We will read that after the  
7 recess.

8 MR. COMYNS CARR: If your Honor pleases.

9 THE PRESIDENT: We will recess for fifteen  
10 minutes.

11 (Whereupon, at 1445, a recess was  
12 taken until 1500, after which the proceedings  
13 were resumed as follows:)

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1 MARSHAL OF THE COURT: The International  
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Comyns Carr.

4 MR. COMYNS CARR: Your Honor, I was propos-  
5 ing to omit certain parts of this document, but my  
6 friend, Mr. YAMAOKA, tells me that if I do they will  
7 consider it necessary to read them, and it will  
8 probably be quicker if I read it in full.

9 THE PRESIDENT: Very well.

10 MR. COMYNS CARR:

11 (Reading)

12 "6. Economic, Finance and Foreign Trade:

13 "Matters relating to commerce, economics  
14 and finance between Japan, China and third Powers will  
15 be regulated with making China give up her hostile  
16 attitude as the main objective.

17 "7. Relations with Third Powers:

18 "Diplomatic policies towards third Powers and  
19 various operations connected with it will, along with  
20 having the third Powers entertain good will towards us  
21 on their own accord, be executed so as not to brew a  
22 conflict with them or invite their interference. In  
23 carrying out military operations and other measures  
24 involved therein, utmost care should be exercised so  
25 that they are in compliance with the main objective



1 stated above.

2 "8. Measures re (Japanese) Residents:

3 "Relief will be administered to (Japanese)  
4 residents.

5 "9. The concrete plans for the foregoing  
6 provisions will be decided separately.

7 "CONCRETE PLANS FOR THE OUTLINED POLICIES  
8 RE THE INCIDENT

9 "The conditions for the settlement of the  
10 situation are for the most part as follows:

11 "I North China

12 "(a) Establishment of demilitarized zones.  
13 A designated area (probably a line linking the area  
14 adjacent to the Yungtingho with Changkiakow) will be  
15 established as a demilitarized zone, where the main-  
16 tenance of public peace and order will be entrusted  
17 to restrictedly-armed Chinese police.

18 "(b) The minimum of the Japanese demands in  
19 North China.

20 "(1) If necessary, Japan will reveal her  
21 intentions to voluntarily reduce, as much as possible,  
22 the number of our occupation troops and limit it to the  
23 number at the time of the outbreak of the incident.

24 "(2) The Tangku Truce (including the various  
25 arrangements concluded in accordance with this

1 agreement. However, those arrangements concluded in  
2 accordance with the Peking (local) arrangements, such  
3 as, (1) the seizure of the Gateways of the Great Wall;  
4 (2) through traffic of railway; (3) establishment of  
5 custom houses; (4) mail service; and (5) air service,  
6 will be excepted) and the DOHIHARA-Chin-T-Chen Agree-  
7 ment, and UMEZU-Young-Chin Agreement will be dis-  
8 solved. (The Central Forces in Hopei will, of course,  
9 be withdrawn from the province.)

10 "However, it is to be pledged that control  
11 over anti-Japanism and prevention of Bolshevization  
12 in the above-mentioned demilitarized areas will be  
13 strictly enforced.

14 "(3) It is to be agreed that Hopei-Chahar  
15 and Eastern Hopei (Councils) will be abolished and  
16 that the administration of these areas will be con-  
17 ducted by the Nanking Government as she pleases. How-  
18 ever, it is desirable that the administrative leaders  
19 of this area be influential for bringing about proper  
20 suitable realization of Sino-Japanese friendly re-  
21 lations.

22 "In connection with the above, Japan will  
23 make an agreement with China, aiming at Sino-Japanese  
24 economic collaborations. This, of course, is a  
25 collaboration depending upon joint management by the



two countries on an equal footing.

"II Shanghai:

"Establishment of demilitarized zone in Shanghai.

"(1) A designated area around Shanghai will be established as a demilitarized zone, where the international police or the restrictedly-armed Chinese police will be responsible for maintaining peace and order; they will be assisted by the Settlement Municipal Police.

"(2) With the above measures, it will become unnecessary for each country to retain their land forces in the settlement. (The anchorage of war-ships is not included in this.)

"III The general readjustment of Sino-Japanese Relations.

"Simultaneously or subsequently to the truce parleys stipulated in I and II, negotiations regarding the readjustment of Sino-Japanese relations will be conducted without being influenced by the past state of affairs between the two countries. The outline for the readjustment plan is as follows:

"Upon the successful conclusion of the intended truce parley, the two countries shall issue a statement stating that they have entered upon a 'New Deal'

1 for the purpose of bringing about close friendship  
2 between the two countries.

3 "1. Political side:

4 "(1) China will grant formal recognition to  
5 Manchukuo.

6 "(2) An anti-Comintern Pact will be con-  
7 cluded between Japan and China (anti-Comintern move-  
8 ments in the North China demilitarized zone will  
9 naturally be brought about by this Pact, but especial-  
10 ly strict control will be enforced in this area.)

11 "(3) In addition to the abolition of the  
12 Hopeh-Chahar Council and Eastern-Hopei Regime as it is  
13 stipulated in the truce pact, Japan will, with regard  
14 to Inner Mongolia, also try to persuade China, through  
15 negotiations, to concede to Japan's righteous demands  
16 (provided in Item (2)) in that area. (China will  
17 recognize the present status of Prince Teh in the SI  
18 and CHA Banners and they will be made a mutual zone  
19 between China and Manchukuo, the preservation of which  
20 both Japan and China will respect.

21 "(4) China will undertake to exercise a  
22 strict nation-wide control over anti-Japanism and to  
23 effect completely the Ordinance of Friendly Relations  
24 with Powers. (Naturally, especially rigid control will  
25 be taken over anti-Japanism in the demilitarized area



1 in North China.)

2 "2. Military Matters:

3 "Free aerial flights will be abolished.

4 "3. Economic Matters:

5 "(1) Reduction of custom tariffs on specific  
6 goods.

7 "(2) Abolition of Eastern-Hopei special  
8 trade and restoration to the Chinese the freedom to  
9 control smuggling in the sea off the demilitarized  
10 areas.

11 "VARIOUS MATTERS TO BE TAKEN UP FOR  
12 NEGOTIATION SIMULTANEOUSLY WITH THE READJUSTMENT OF  
13 DIPLOMATIC RELATIONS

14 "The plan regarding the settlement of the  
15 aforesaid situation is:

16 "(1) to minimize the danger of future armed  
17 conflict between China and Japan by establishing  
18 demilitarized zones and so forth, along with,

19 "(2) removing deep-rooted causes for clashes  
20 by general readjustment of diplomatic relations, and  
21 thus establish a truly bright friendship between China  
22 and Japan, based on newly-built-up diplomatic relations.  
23 Consequently, to solve the pending issues between the  
24 two countries amicably through normal conversations  
25 after establishment of a bright cheerful diplomatic

1 relationship and to more strongly promote mutual  
2 understanding between Japan and China, will be our  
3 goal. But along with the expansion of the aspects of  
4 war, the people's expectation of the fruits of war  
5 will grow larger and they will not be content with  
6 merely the normal and ordinary things but will be  
7 anxious to secure conditions of a more tangible  
8 nature, such as indemnities and so forth. Accordingly,  
9 in considering the internal situation, we must be con-  
10 sistent as much as possible in the spirit of being  
11 broad-minded in the settlement of the situation as  
12 stated above, and at the same time that we negotiate  
13 on the readjustment of diplomatic relations, we will  
14 take up the various conditions stated below:

15 "Special Conditions

16 "(A) Indemnities:

17 "(Indemnities for the direct damages done to  
18 the Japanese owned properties and rights, which China  
19 has assumed the responsibility of protecting, and for  
20 the direct damages due to illegal use or disposal by  
21 China of Japanese owned properties and rights, and  
22 similarly caused damages.)

23 "(B) Formation and operation of a large-  
24 scale Sino-Japanese joint syndicate which engages in  
25 the following enterprises:-



1           "(1) Marine transportation: Merger of the  
2 China Merchants Navigation Company with the Nisshin  
3 Kisen (Sino-Japanese Steamship Co.) and Dairen Kisen  
4 (Dairen Steamship Co.)

5           "(2) Aviation: (a) Operation of the  
6 Shanghai-Fukuoka, Tsingtao-Fukuoka, Fukien-Taipei  
7 (T.N. Northern Formosa) and Kwantung-Taipei lines.  
8 (b) Sino-Manchurian air service (with which are to be  
9 merged the lines under the management of Hwei-Tung Co.)

10           "Whether the air service between Asia and  
11 Europe is to be operated as a joint enterprise by the  
12 syndicate, and whether this is to be dealt with in a  
13 special negotiation, - requires further study, but  
14 for the present the following items will be considered:

15           "(c) The Asia-European Air Service Company  
16 will be amalgamated into the syndicate (German hold-  
17 ings in the company will be bought up by Japan.)

18           "(3) Railroads: (a) Construction and manage-  
19 ment of the Shantung Railroad and its branch lines.  
20 (b) Construction and management of the Tsingshih Rail-  
21 way. (c) Construction and management of the Chengten-  
22 Peiping Railway.

23           "(4) Mining: Gold, iron, coal mines in  
24 North China.

25           "(5) Agriculture and other suitable

enterprises.

1           "(C) Settlement of pending issues (the  
2 numbers at the head of the clauses show the order in  
3 which the issues will be settled:)

4           "(1) Conclusion of a Sino-Japanese tariff  
5 treaty (the particulars are mentioned on separate  
6 list A.)

7           "Reduction or removal of import and export  
8 duties.  
9

10           "(2) Removal or modifications of the ban  
11 and restrictions on import and export (for the  
12 particulars, refer to the separate list B.)

13           "(3) Removal of restrictions on the pro-  
14 duction and export of salt."  
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1 I am told that in the paragraph numbered 3  
2 on page 5, the first paragraph numbered 3 in brackets,  
3 I omitted the words "...and Eastern-Hopei Regime..."  
4 BY MR. COMYNS CARR (Continued):

5 Q Now, Mr. HORINOUCI, was not that immediately  
6 followed up by another document which I am going to  
7 show you, prosecution document No. 820-A?

8 (Whereupon, a document was handed to  
9 the witness.)

10 Q (Continuing) Now, if you will just look at  
11 that, you will find that the first part of it comes  
12 from the War Department, but the second part is stated  
13 to be approved by the Foreign Minister on October 21st,  
14 and then a little lower down it is given as decision of  
15 the three departments of War, Navy and Foreign Affairs  
16 on October 22, 1937. Was not that part so approved by  
17 HIROTA on October 21?

18 A I could not reply to your question without  
19 reading this document first. I cannot confirm the  
20 accuracy or authenticity, because I do not notice the  
21 signature of the Foreign Minister.

22 Q Is it not a document which on its face comes  
23 from the Foreign Ministry?

24 A As to the stationery used, this is of the type  
25 customarily used by the Foreign Office.

1 Q And I suggest to you it comes from the  
2 Foreign Office files.

3 A I have no basis upon which to confirm the  
4 authenticity of this document inasmuch as this document  
5 does not bear the signatures of the Foreign Minister, or  
6 of myself as Vice-Minister, or of directors of bureaus.

7 Q Have you looked at it?

8 (The witness examined a document)

9 Q Now, Mr. HORINOUCI, do not you recognize that  
10 document perfectly well as a decision which was reached  
11 by those three ministries, including your own?

12 A With respect to this document, I have no exact,  
13 positive recollection. As I have said before, I am  
14 unable to reply to your question inasmuch as I have no  
15 assurance as to the authenticity or correctness of this  
16 document, and to tell you whether this was the result  
17 of a decision made in the Foreign Office.

18 Q But, Mr. HORINOUCI, in your affidavit you have  
19 professed to give us, largely from memory, a full and  
20 detailed account of these negotiations.

21 A Of course, it is impossible to remember all the  
22 details and every particular and so I do not claim to  
23 say I remember everything. I can say that there may have  
24 been such a thing as this, but at the present time I  
25 have no positive recollection whether this document



1 itself was as a result of discussions.

2 Q Well then, I shall have to ask you questions  
3 based upon the statements which it contains.

4 Did not HIROTA, together with the War and  
5 Navy ministers in October 1937 decide that Japan would  
6 reject intervention or arbitration founded, as it is  
7 stated, on placing Japan from the first in the position  
8 of a defendant?

9 A It was the fixed policy to reject intervention  
10 by third powers.

11 Q Or arbitration.

12 A The policy was also to reject arbitration.

13 Q The date which I am putting to you, October 22,  
14 is two days after the first invitation to the Brussels  
15 Conference was received. Did they not then, those three  
16 ministers, immediately decide to reject that invitation?

17 A I do not know whether it was two days later or  
18 not, but the government decided to reject the invitation.

19 Q Did they, those three ministers, decide that  
20 "With the advance of our military movement, when its  
21 purpose shall be practically attained, the Nanking  
22 Government would, under pressure of our force, want in  
23 their hearts to sue for peace..."?

24 A I have no recollection whether it was decided  
25 that China would be brought about to take such measures

1 by pressure.

2 Q Don't you? Wasn't that the whole object from  
3 the beginning?

4 A That is not so.

5 Q Now, did those three ministers on that day  
6 decide that then, that is, when the purpose of the  
7 military movement was practically attained, the good-  
8 will offices of England, the United States and other  
9 third parties would be advantageous, if their means were  
10 proper, to draw China into the negotiation?

11 A I think that it was our policy that it would  
12 be welcome if the means were proper.

13 Q Did they decide that it would be an excellent  
14 thing if Germany and Italy, who were on friendly terms  
15 with Japan, should act as arbitrators at the request of  
16 China?

17 A The good offices of Germany and Italy were  
18 welcome and the fact that War Minister HIROTA welcomed  
19 the good offices of the United States and Great Britain  
20 is, as I have stated from this stand this morning.

21 Q There is nothing like having the judge on  
22 your side before you begin, is there?

23 A No, that is not so.  
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THE PRESIDENT: Mr. Yamaoka.

MR. YAMAOKA: If it please the Tribunal, I object most strenuously to the characterization of this witness in such a manner.

THE PRESIDENT: Well, those things are occasionally said in cross-examination. We cannot say they are a help, but nobody is shocked by them.

We would all prefer that they be omitted.

Q Did the three ministers decide in advance, on or about the 22nd of October 1937, first, that they positively refuse and exclude hasty intervention or arbitration by third parties?

A As I have said before, it was Japan's policy to reject intervention or arbitration, whether it was early or late. Of course, good offices of third parties were always welcome but the desire and policy of the Japanese Government was to effect a fundamental settlement of the trouble between Japan and China through direct negotiations.

Q Did they decide that they might accept peace recommending services from third parties when Japan had nearly achieved the purpose of her military movements towards China?

A As far as the Foreign Office authorities or ourselves were concerned, the purpose of military

1 operations were to protect the lives and interests of  
2 Japan in China, and when that purpose was realized  
3 Japan was prepared for -- to accept.

4 Q But by this time, October 22, it had got  
5 far beyond any question of protecting anything, had  
6 it not?

7 A Japanese interests were to be found through-  
8 out China.

9 Q Was that, then, a sufficient excuse for  
10 occupying all China?

11 A Of course, complete occupation of that large  
12 territory would be impossible, but we believed that  
13 the purpose or objective could be carried out by  
14 occupying important points -- that is, it would be  
15 impossible to occupy that large country, geographically  
16 speaking.

17 Q Why were they not willing to accept peace  
18 recommending services from third parties until the  
19 military purpose had been nearly achieved?

20 A As a matter of fact, informal negotiations  
21 were already in progress, and if the meeting of the  
22 three ministers mentioned here actually took place,  
23 I presume -- I would presume that when the proper time  
24 came they would like to place the matter -- place the  
25 negotiations on an official level.



1 Q Did they decide not to publish their inten-  
2 tion of accepting the good will offices of third  
3 parties or to make it known to foreign governments  
4 because that would indicate to them some weakness  
5 within Japan?

6 A Such a possibility could exist. -- from our  
7 diplomatic knowledge I could say that such a possi-  
8 bility could exist because such measures are taken --  
9 that is, such precautions are common in diplomatic  
10 practice.

11 Q Was that, to your knowledge, HIROTA's policy  
12 at that time?

13 A I think so.

14 Q Did they decide on that day that they would only  
15 notify the policy beforehand to Germany and Italy?

16 A I do not recall as much as that.

17 THE INTERPRETER: Correction -- I do not  
18 have any recollection of that.

19 Q Did they decide that they would have another  
20 meeting between the three ministers, to decide when  
21 the purpose of military movements towards China had  
22 nearly been accomplished, and when they had better  
23 notify the policy to Germany and Italy?

24 A I do not recall that.  
25

1 Q Well, now that I have put to you those  
2 questions, are you still in doubt as to whether this  
3 is an authentic Foreign Office document?

4 A No, what I have just told you in reply to  
5 your questions come from within the scope of my  
6 recollection, and I have stated those recollections  
7 as honestly and accurately as I possibly can. I  
8 cannot say more than that.

9 Q Now, at the end of October or beginning of  
10 November, do you remember that HIROTA invited a number  
11 of industrialists to tea -- on the first of November,  
12 to be precise?

13 A In my recollection that was a few days earlier  
14 than that.

15 Q So you do recollect it? Were you present?

16 A Yes, I did.

17 Q At that time was there an anti-British move-  
18 ment going on in Japan?

19 A Yes.

20 MR. COMYNS CARR: Document 16 please,  
21 Language Division. I shall read the whole part of it  
22 within the inverted commas.  
23

24 Q Did he say this to them? "This anti-British  
25 movement is very bad. If England is disregarded there  
will be no country that will act as an intermediary



1 between Japan and China. Therefore, if such things are  
2 done now, the government will be troubled. In the end  
3 we may have to fight England. We may also have to  
4 collide with her sometime, but such things are  
5 absolutely out of the question right now. Diplomatically,  
6 if such things are done now, the government  
7 will be greatly inconvenienced."

8 A Well, I do not recall all that Foreign  
9 Minister HIROTA said on that occasion, but what he  
10 said was that inasmuch as Great Britain was the most  
11 proper country to serve as a bridge in bringing together  
12 reconciliation between Japan and China, such  
13 anti-British movement would be most troublesome and  
14 embarrassing to Japan.

15 Q Did he say, "In the end we may have to  
16 fight England"?

17 A That I do not recall.

18 Q Would you be surprised if he himself told  
19 Baron HARADA that he had said that?

20 A Yes, I would be surprised.  
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1 Q Now, you say, and it agrees with the account  
2 I am putting to you, that he told these industrialists  
3 that England was the only country at the moment to  
4 act as an intermediary between Japan and China. Had  
5 he not within the previous fortnight agreed with the  
6 ministers of war and the navy that it would be much  
7 better to have Germany and Italy?

8 A I have no recollection as to that, but he had  
9 no objection to using these two countries for the pur-  
10 pose. However, Foreign Minister HIROTA constantly sta-  
11 ted that it was not proper nor appropriate nor effec-  
12 tive to rely only on Germany and Italy for their good  
13 offices. As evidence of that fact I should like to state  
14 that with respect to what Foreign Minister HIROTA replied  
15 to Ambassador Craigie when Craigie himself said that  
16 even after the good offices of Germany and Italy were  
17 requested, inasmuch as these two countries do not have  
18 the -- are not held in confidence and trust by China,  
19 it would be more advantageous and effective to rely upon  
20 the good offices also of the United States and Britain,  
21 and to this the Foreign Minister replied that he was  
22 heartily -- that he heartily approved of this suggestion.

23 Q Did he not on the very day when I suggest he had  
24 this conversation with Baron HARADA, namely, the 2nd of  
25 November, entrust the sole conduct of the negotiations to



1 Germany?

2 MR. YAMAOKA: If the Tribunal please, I object  
3 to this line of questioning.

4 THE PRESIDENT: Mr. Yamaoka, that must be trans-  
5 lated into English.

6 THE INTERPRETER: Mr. President, it is quite  
7 difficult, but literally he said, "As to requesting the  
8 German ambassador," and then stopped.

9 THE PRESIDENT: Mr. Yamaoka.

10 MR. YAMAOKA: If the Tribunal please, I object  
11 to this line of questioning for the reason that the wit-  
12 ness has not stated that he knows about this conversa-  
13 tion between Baron HARADA and Mr. HIROTA.

14 THE PRESIDENT: He can be asked about it.

15 MR. COMYNS CARR: It is enough for my purpose  
16 to name the date. I will reframe the question to meet  
17 my friend's point.

18 Q Did not HIROTA on the 2nd of November, 1937,  
19 entrust the sole conduct of the negotiations with China  
20 to Germany through Ambassador Dirksen?

21 A He has in no case at all ever entrusted sole  
22 responsibility for negotiations to any ambassador.

23 Q Did he not on that day ask Ambassador Dirksen  
24 to undertake the negotiations through the German am-  
25 bassador in China?

1 A I don't recall the exact date, whether it was  
2 the 2nd of November or not, but I do recall the fact  
3 of making the request of the German ambassador.

4 Q Was it not early in November?

5 A That is my recollection; but as to the tea  
6 party, I think that was held a week before, around the  
7 26th of October.

8 Q Did he not receive a visit shortly before the  
9 5th of November from Ambassador Craigie?

10 A I have no positive recollection whether it was  
11 the 5th or not.

12 Q In the beginning of November?

13 A It is difficult for me to identify the -- to  
14 confirm the date you are pointing to, because Ambassa-  
15 dor Craigie frequently visited Foreign Minister HIROTA.

16 Q Tell me whether you were present and can recolle-  
17 ect this conversation between them: Did Ambassador  
18 Craigie say that in view of the anti-British agitations  
19 that were going on he thought perhaps that England  
20 would not be the best country to conduct the negotia-  
21 tions?

22 A My recollection of the talk was that it might  
23 be difficult if Great Britain alone handled the matter.

24 Q And did not HIROTA say, "England is the most  
25 suitable country. Nothing can be settled if Germany



1 and Italy come into the picture"?

2 A I think that such a conversation was quite  
3 possible, because Foreign Minister HIROTA always thought  
4 that Great Britain surely was perhaps the most reli-  
5 able country to serve or act as a mediator.

6 Q And didn't he say that immediately after he had  
7 in fact asked Dirksen to initiate the negotiations?

8 A There was no objection to Germany and Great  
9 Britain acting together -- participating together in  
10 the work of mediation, but I think I recall Mr. HIROTA  
11 as having said to Ambassador Craigie -- There were no  
12 objections as to Great Britain and Germany working to-  
13 gether on the same matter. However, because of the  
14 army's opposition to British mediation in the case, I  
15 recall Foreign Minister HIROTA telling Ambassador Craigie  
16 that he would like to have him, namely, Ambassador  
17 Craigie, talk over the matter with the German ambassa-  
18 dor and to take a cooperative role in the work of media-  
19 tion.

20 MR. COMYNS CARR: I refer the Tribunal to the  
21 account of this matter in exhibits 486, record page  
22 5983; 270, which was read into the record at page 3610  
23 and 2235, which is a revised translation of the same  
24 document as 270, which was introduced but not read  
25 again at page 16069.

1 THE PRESIDENT: We have before us the prosecu-  
2 tion's document not tendered, being document 820-A.

3 MR. COMYNS CARR: Your Honor, I didn't know it  
4 had been handed up. As the witness declined to identi-  
5 fy it, I did not offer it in evidence, but I was basing  
6 a number of questions upon it.

7 THE PRESIDENT: I quite understand why it is;  
8 Mr. Carr, but the fact is that we have a document we  
9 should not have.

10 We will adjourn until half-past nine tomorrow  
11 morning.

12 (Whereupon, at 1600, an adjourn-  
13 ment was taken until Thursday, 2 October 1947,  
14 at 0930.)  
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